

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America, ex rel.)
Michael K. Drakeford, M.D.,) C/A No. 3:05-2858-MBS
)
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Plaintiff,)
)
)
vs.) **O R D E R**
)
)
Tuomey d/b/a Tuomey Healthcare)
System, Inc.,)
)
)
Defendant.)

)

Plaintiff United States of America brings this action under the False Claims Act, 31 U.S.C. § 3729, which provides that the government can bring an action for a civil penalty of not less than \$5,000 or more than \$10,000, plus treble damages, if, among other things, a defendant “knowingly” presents a false or fraudulent claim for payment. In this case, the government asserts it made payments to Defendant Tuomey d/b/a Tuomey Healthcare System, Inc. (“Tuomey”) under the Medicare and Medicaid Programs, but that the claims for payment were unlawful under the Stark Law, 42 U.S.C. § 1395m.

On May 8, 2013, a jury determined that Tuomey had violated the Stark Law, and that 21,730 claims were submitted in violation of the False Claims Act. The jury further determined that the total monetary value of these claims is \$39,313,065. ECF No. 813. By order filed September 30, 2013, as amended October 2, 2013, the court ordered judgment under the False Claims Act of \$237,454,195. ECF Nos. 881, 886. Judgment was entered on September 30, 2013, as amended October 2, 2013. On October 1, 2013, Tuomey filed a notice of appeal, which notice was amended

on October 3, 2013.

This matter is before the court on motion to stay pending appeal, which motion was filed by Tuomey on December 20, 2013. ECF No. 895. The government filed a response in opposition on January 8, 2014, to which Tuomey filed a reply on January 23, 2014. Also before the court is Tuomey's motion for protective order, which motion was filed on January 15, 2014. ECF No. 899. The government filed a response in opposition on February 3, 2014, to which Tuomey filed a reply on February 13, 2014. In addition, before the court is the government's motion for leave to file a surreply to Tuomey's reply in support of its motion to stay, which motion was filed by the government on February 5, 2014. ECF No. 906. Tuomey filed a response in opposition on February 9, 2014.

Having fully reviewed the motions, memoranda, applicable law, and the record in this case, the court rules as follows:

1. Tuomey's motion for a stay pending appeal is granted as follows. Tuomey shall obtain a supersedeas bond or equivalent in the amount of \$30,000,000 within ten days of the date of entry of this order. Tuomey and the government also shall enter into an escrow agreement composed of similar mutually-agreeable terms as that entered into between the parties in 2010 (ECF No. 898-1) in the amount of \$40,000,000.

2. The court has reviewed the documents and arguments filed under seal and is not persuaded that the material is relevant to the question before the court. Therefore, the sealed portions of the government's response to Tuomey's motion for stay pending appeal (ECF No. 898) and Tuomey's reply in support (ECF No. 904) are stricken.

3. Tuomey's motion for protective order is denied as moot.

4. The government's motion for leave to file surreply is granted. The court has

considered the government's arguments in the surreply attached to its motion in making its ruling.

Upon a showing that it has attempted but is unable to purchase a supersedeas bond, Tuomey may apply to the court for permission to place the sum of \$30,000,000 with the Clerk of Court, to be deposited in an interest-bearing account until further order of this court.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Senior United States District Judge

Columbia, South Carolina

April 9, 2014